IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DION MATHEWS and MUSTAFA-EL K.A. AJALA
formerly known as Dennis E. Jones-El,

ORDER

Plaintiffs,

10-cv-742-bbc

v.

RICK RAEMISCH, PETER HUIBREGTSE,
GARY BOUGHTON, JAMES GREER,
DAVID BURNETT, CYNTHIA THORPE,
LT. HANFELD, MARY MILLER,
KAMMY JONES and WISCONSIN
DEPARTMENT OF CORRECTIONS,

Defendants.

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In an opinion and order dated February 23, 2012, dkt. #138, I granted defendants' motion for summary judgment on plaintiffs' claims that defendants violated their rights under federal law by denying plaintiffs' request for special shoes, subjecting them to 24-hour lighting and enforcing a policy that requires prisoners to have a tooth extracted in any instance in which a root canal is needed. Dkt. #138. Judgment was entered on February 27, 2012. Dkt. #139.

Three motions filed by plaintiffs are now before the court: (1) a motion to "alter or

amend the judgment and for relief from judgment under Fed. R. Civ. P. Rules 59(e) and 60(b)(4)-(6)," dkt. #140; (2) a motion for leave to file their reply brief one day after it is due, dkt. #144; and (3) a motion for appointment of counsel. Dkt. #142. I will grant plaintiffs' motion for an extension of time. (Plaintiffs have since filed their reply brief and I have considered it in deciding the other motions.) However, I am denying the other two motions because plaintiffs have not shown that it was error to grant defendants' motion for summary judgment or that they are entitled to appointment of counsel at this late stage.

Defendants cite both Rule 59(e) and Rule 60(b) in their first motion, but they fail to develop an argument with respect to any of the grounds for relief listed in Rule 60(b). Further, because the arguments in their brief are limited to alleged errors of law and fact made by the court in the summary judgment decision, I conclude that their motion should be evaluated under Rule 59. Seng-Tiong Ho v. Taflove, 648 F.3d 489, 496 (7th Cir. 2011) ("An error of law is a basis for altering or amending the judgment under Rule 59(e), but it is not explicitly recognized as a basis for relief under Rule 60(b).").

Plaintiffs devote most of their brief to their claim that various officials on the "special needs committee" violated their Eighth Amendment rights by denying their request for shoes with velcro straps, which plaintiffs believe would help with foot pain. In the summary judgment decision, I concluded that defendants were entitled to summary judgment primarily because plaintiffs failed to adduce any evidence that defendants knew that

plaintiffs had a serious medical need when they denied plaintiffs' request. Knight v. Wiseman, 590 F.3d 458, 463 (7th Cir. 2009) ("To show deliberate indifference, the plaintiff must demonstrate that the defendant was actually aware of a serious medical need but then was deliberately indifferent to it."). Most of plaintiffs' arguments in their motion for reconsideration are not related to that conclusion, so I need not consider them.

The only argument of marginal relevance that plaintiffs make is that they have "proof [that they] complained to defendants of their medical needs." Plts.' Br., dkt. #141, at 7. This is true, but unhelpful. The question is not whether defendants knew plaintiffs wanted the shoes; it is whether defendants were aware of information showing that plaintiffs had a serious medical need requiring defendants to grant plaintiffs' request. Plaintiffs still fail to cite any evidence to make that showing.

Plaintiffs say that "[t]he medical orders [are] all [defendants] need[ed] to know." Plts.' Br., dkt. #145, at 5. Plaintiffs do not elaborate, but presumably they are referring to the "Medical Restrictions/Special Needs" forms in which Dr. Burton Cox had approved their requests for the velcro strap shoes in the past. This argument has two problems. First, plaintiffs do not point to any evidence showing that defendants were aware of those orders. Second, it is undisputed that the orders were no longer in effect; Cox had denied plaintiffs' most recent requests for the shoes, which is why they were seeking approval from defendants. Thus, even if I assume that the orders are evidence that plaintiffs had a serious

medical need, plaintiffs cannot rely on orders from the past to show that defendants were deliberately indifferent to that need at a later time.

Although plaintiffs challenge the dismissal of their other claims, they do not develop an argument as to any of them. In fact, they include no substantive discussion about the other claims in their reply brief, even though defendants addressed each claim in their opposition brief. Accordingly, I conclude that plaintiffs have failed to show that it was error to dismiss those claims.

Finally, plaintiffs say that their loss on summary judgment proves that they need counsel. In particular, they say, "[w]hat the court has actually found is not that the evidence was lacking, but rather that the preparation and presentation was." Plts.' Br., dkt. #141, at 9. That is incorrect. I granted defendants' motion for summary judgment not because plaintiffs' "presentation" was inadequate, but because the evidence did not support their claims.

I denied plaintiffs' previous motion for appointment of counsel because they failed to show that the complexity of the case exceeded their ability to prosecute it. Dkt. #109. Throughout this case, plaintiffs have shown their familiarity with federal law and procedure and their ability to understand complex legal concepts. Nothing in the summary judgment materials or in the motion for reconsideration supports a different conclusion. Although plaintiffs lost the case, this does not mean that plaintiffs would have had any greater success

with a lawyer.

ORDER

IT IS ORDERED that

1. The motion filed by plaintiffs Dion Mathews and Mustafa-El K.A. Ajala for an extension of time, dkt. #144, is GRANTED.

2. Plaintiffs' motion to alter or amend the judgment under Fed. R. Civ. P. 59(e), dkt. #140, is DENIED.

3. Plaintiffs' motion for appointment of counsel, dkt. #142, is DENIED.

Entered this 30th day of May, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge